

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

3

SENATE BILL 575
State and Local Government Committee Substitute Adopted 7/21/15
Corrected Copy 7/22/15

Short Title: NC/SC Original Border Confirmation.

(Public)

Sponsors:

Referred to:

March 30, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE LEGISLATIVE CHANGES TO FACILITATE THE WORK OF THE
3 BOUNDARY COMMISSION IN CONFIRMING AND REESTABLISHING THE
4 ORIGINAL BOUNDARY EXISTING BETWEEN THE STATES OF NORTH AND
5 SOUTH CAROLINA.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. GENERAL PROVISIONS**

9 **SECTION 1.(a)** Findings. – The General Assembly finds that:

- 10 (1) North Carolina and South Carolina were created as separate British colonies.
11 (2) Surveys to determine the boundary between North Carolina and South
12 Carolina began in 1735 and concluded in 1815.
13 (3) Resurveys of three sections of the boundary between North Carolina and
14 South Carolina were performed in 1813, 1905, and 1928.
15 (4) The boundary between North Carolina and South Carolina has not changed;
16 however, over the course of time from the original survey of the boundary,
17 some of the markers denoting the boundary from the original surveys have
18 been lost or destroyed by the elements.
19 (5) The boundary commission authorized pursuant to Chapter 141 of the
20 General Statutes has worked with commissioners appointed by South
21 Carolina to reestablish the boundary between North and South Carolina.

22 **SECTION 1.(b)** Intent. – It is the intent of the General Assembly to address the
23 effects on persons or land with a situs recognized, as a result of a border certification, to be in
24 this State. This act does not apply to persons whose property, rights, and businesses are not
25 affected by border certification. For purposes of this act, "border certification" means the
26 certification by the General Assembly of the border between North Carolina and South
27 Carolina, as provided for in Section 3 of this act.

28 **SECTION 1.(c)** Certification. – The General Assembly hereby certifies that, as of
29 January 1, 2016, the boundary between North Carolina and South Carolina is the boundary that
30 was established by the original survey and resurveys that were adopted through legislative and
31 executive actions, and the reestablished boundary has been approved by the boundary
32 commissions of North Carolina and South Carolina and proclaimed as the boundary by the
33 Governor, pursuant to G.S. 141-5.

34
35 **PART II. TAX LIABILITY**



1 **SECTION 2.(a)** Taxes. – The following provisions apply to taxes affected by
2 border certification:

- 3 (1) Neither the State nor a subdivision of the State may assess a tax on a person
4 for activities occurring prior to the date of certification where the basis of the
5 assessment is the certification.
- 6 (2) The State and its subdivisions may assess a tax for activities occurring on or
7 after the date of certification subject to the following conditions:
- 8 a. For taxes imposed for a taxable period, the tax may not be imposed
9 for a period beginning prior to the date of certification.
- 10 b. For sales and use taxes for an item that is provided and billed on a
11 monthly or other periodic basis, the tax may not be assessed for
12 periods beginning prior to the date of certification.
- 13 c. For a person subject to taxes levied under Article 2A of Chapter 105
14 of the General Statutes who, on the date of the certification, has on
15 hand any tobacco products, the person must file a complete inventory
16 of the tobacco products within 20 days after date of certification and
17 must pay an additional tax to the Secretary of Revenue when filing
18 the inventory. The amount of the tax due is the amount due based on
19 the current tax rate less any tax paid on the inventory to another state.
- 20 d. For installments and carryforwards of tax benefits allowed by this
21 State at the time of border certification for activities with a situs in
22 South Carolina, a person may claim remaining installments and
23 carryforwards against State tax liability.
- 24 e. For land that is classified under G.S. 105-277.3 at the time of border
25 certification and that fails to meet the size requirements of
26 G.S. 105-277.3 solely because of border certification, (i) no deferred
27 taxes are due as a result of border certification, (ii) the deferred taxes
28 remain a lien on the land located in this State, and (iii) the deferred
29 taxes for the land in this State are otherwise payable in accordance
30 with G.S. 105-277.3. The tax benefit provided in this sub-subdivision
31 is forfeited if any portion of the land located in this State is sold.
- 32 f. For land receiving a property tax benefit other than classification
33 under G.S. 105-277.3 at the time of border certification that fails to
34 meet the requirements for the property tax benefit solely because of
35 border certification, the land is not entitled to receive the property tax
36 benefit after the time of border certification unless it meets the
37 statutory requirements, but the lien on the land for the deferred taxes
38 is extinguished as if it has been paid in full.
- 39 (3) A person may not seek a refund for activities occurring prior to the date of
40 certification where the basis of the refund is the certification.

41 **SECTION 2.(b)** An establishment to which permits may be issued pursuant to
42 G.S. 18B-1006(n1), as enacted by this act, is designated a special class of property under
43 Section 2(2) of Article V of the North Carolina Constitution, and the motor fuel sold by that
44 establishment is taxable in accordance with this section. Notwithstanding G.S. 105-449.80, the
45 motor fuel excise tax rate for the 2016 calendar year for an establishment to which permits may
46 be issued pursuant to G.S. 18B-1006(n1), as enacted by this act, is sixteen cents (16¢) a gallon.
47 The Revenue Laws Study Committee shall annually compare the motor fuel excise tax rate
48 imposed by this section with the rate levied by the State of South Carolina on motor fuels and
49 may recommend a change in the rate imposed by this section to an amount no greater than the
50 rate then in effect for the State of South Carolina. The Department shall calculate for each
51 calendar year the difference between the motor fuel excise tax that would have been imposed

1 under G.S. 105-449.80 on the motor fuel sold by an establishment classified by this section in
2 the absence of this classification and the motor fuel excise tax that was imposed on the motor
3 fuel sold by the establishment due to the classification. The difference in taxes, together with
4 any interest, penalties, or costs that may accrue thereon, are a lien on the real property of the
5 taxpayer as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the
6 records of the Department as deferred taxes. The deferred taxes for the preceding four calendar
7 years are due and payable on the day this subsection becomes ineffective due to the occurrence
8 of a disqualifying event. A disqualifying event occurs when the establishment is transferred to a
9 new owner. A lien for deferred taxes is extinguished when the taxes are paid.

10 **SECTION 2.(c)** This Part is effective for taxable periods beginning on or after
11 January 1, 2016.

12 **PART III. INSTRUMENTS OF TITLE TO REAL PROPERTY**

13 **SECTION 3.** Title to real property previously treated as being subject to the
14 jurisdiction of the State of South Carolina but that is recognized as being within the boundaries
15 of this State as a result of the certification of the boundary shall remain in full force, effect, and
16 priority as if the title had been originally registered in this State.

17 Notwithstanding G.S. 161-14, for any portion of real property that is recognized as
18 being within the boundaries of this State as a result of certification of the boundary, and that
19 previously has not been registered and indexed in this State, the register of deeds shall register,
20 index, and cross-index any instruments presented for registration retroactive to the effective
21 registration date and time, as reflected by an original or certified copy of an instrument duly
22 registered in South Carolina. In lieu of assigning a retroactive registration date and time in the
23 index, the register of deeds may affix a statement, on a separate sheet of paper, immediately
24 preceding the instrument presented for registration that cites this act and provides notice that
25 the instrument shall have full force and effect as of the date of registration assigned by the
26 South Carolina registry.

27 Notwithstanding any other provision of law, the register of deeds shall not collect
28 any fees or taxes for instruments registered, indexed, or cross-indexed pursuant to this act.

29 **PART IV. FORECLOSURE OF DEEDS OF TRUST AND MORTGAGES**

30 **SECTION 4.** Foreclosure actions initiated on real property encumbered by a lien
31 recorded in South Carolina wherein the real property is situated, in whole or in part, within the
32 certified North Carolina boundaries shall be governed by the terms of the security instrument
33 sought to be enforced. If the security instrument contains a power of sale clause, the party
34 seeking to enforce the terms of the security instrument may initiate a foreclosure action in the
35 county where the real property is situated pursuant to Chapter 45 of the General Statutes. A
36 party seeking to enforce the terms of the security instrument may also resort to judicial
37 foreclosure, pursuant to Article 29A of Chapter 1 of the General Statutes, in accordance with
38 the terms within the security interest. Judgments or orders of foreclosure entered by courts of
39 this State are binding and effective only with respect to the portion of real property situated
40 within this State. Prior to initiating an action to enforce a security instrument, the security
41 instrument shall be recorded in the office of the register of deeds for the county where the
42 subject property is situated.

43 **PART V. PUBLIC SCHOOL STUDENT ENROLLMENT**

44 **SECTION 5.(a)** Notwithstanding any other provision of law, a student who (i) was
45 eligible to enroll in a North Carolina local school administrative unit in accordance with
46 G.S. 115C-366 prior to the date of the certification and (ii) loses the eligibility to enroll in a
47 public school, including a charter school, as a result of certification may attend a North
48
49
50

1 Carolina public school located within the local school administrative unit or attend a North
2 Carolina charter school, without the payment of tuition, until that student:

- 3 (1) Reaches the age of 21.
- 4 (2) Obtains a high school diploma.
- 5 (3) No longer meets the requirements of G.S. 115C-366 that were the basis for
6 the student's eligibility for enrollment prior to the date of certification.
- 7 (4) Loses eligibility pursuant to subsection (b) of this section.

8 **SECTION 5.(b)** A student who attends a North Carolina public school or charter
9 school under subsection (a) of this section and the student's parent, legal guardian, or custodian
10 shall be subject to the laws and rules governing North Carolina public schools and charter
11 schools in accordance with Chapter 115C of the General Statutes, including meeting the
12 requirements of the compulsory attendance law under Part I, Article 26 of Chapter 115C of the
13 General Statutes.

14 Notwithstanding the enforcement provisions of G.S. 115C-378(f), 115C-380,
15 115C-381, and 115C-382, a parent, guardian, or custodian of a student enrolled in a North
16 Carolina public school or charter school under this section who is determined by the principal
17 of the student's public school or the charter school to be in violation of the compulsory
18 attendance laws shall no longer be eligible to enroll the student in a North Carolina public
19 school or charter school pursuant to subsection (a) of this section in a subsequent semester of
20 the school year. In addition, the local school administrative unit or charter school in which the
21 student is enrolled shall notify, based on the student's place of residence in South Carolina, the
22 juvenile court or such other court in the county that has jurisdiction of juveniles and, if
23 applicable, the attendance supervisor for that county.

24 **SECTION 5.(c)** The State Board of Education shall provide that a student enrolled
25 in a North Carolina public school or charter school in accordance with subsection (a) of this
26 section be included in calculations for average daily membership, reporting for the Uniform
27 Education Reporting System, and eligibility for State and federal funds.

28 **SECTION 5.(d)** Except as otherwise provided by this section or G.S. 115C-366, a
29 student who is a legal resident of South Carolina shall not be entitled to enroll in a North
30 Carolina public school.

31 32 **PART VI. DRIVER EDUCATION ELIGIBILITY/BEGINNER LICENSE**

33 **SECTION 6.(a)** Notwithstanding State Board of Education policy, GCS-R-004, or
34 any other provision of law, if a student enrolled in a North Carolina public school or charter
35 school under subsection (a) of Section 5 of this act obtains a beginner's permit in South
36 Carolina, the student shall be eligible to participate in behind-the-wheel instruction as part of a
37 driver education course offered by the local school administrative unit in which the student is
38 enrolled.

39 **SECTION 6.(b)** Notwithstanding G.S. 20-11(b)(1), a student who (i) as a result of
40 the certification, becomes a legal resident of North Carolina on the date of the certification and
41 (ii) is enrolled in a South Carolina school district in which his or her residence was located
42 prior to certification or in the South Carolina statewide public charter school district may meet
43 the requirement in G.S. 20-11(b)(1) for obtaining a limited learner's permit if the student passes
44 a course of driver education offered by the South Carolina high school in which the student is
45 enrolled.

46 **SECTION 6.(c)** The Department of Transportation, Division of Motor Vehicles, in
47 collaboration with the State Board of Education, shall develop a procedure for any North
48 Carolina resident who is a student enrolled in a South Carolina school pursuant to the
49 conditions described in subsection (b) of this section to satisfy the driver eligibility certificate
50 requirements of G.S. 20-11 to obtain and continue to hold a limited or full provisional license
51 under that section.

PART VII. ELIGIBILITY FOR IN-STATE TUITION

SECTION 7.(a) Notwithstanding any other provision of law, independent persons and their dependents formerly domiciled in North Carolina counties who are domiciled in South Carolina counties as a result of the North Carolina-South Carolina boundary certification may be considered eligible for in-State tuition rates for a period of up to 10 years from the effective date of the boundary change. To be eligible for in-State tuition rates, such persons must have been domiciled and reside on property in North Carolina in accordance with G.S. 116-143.1 immediately prior to the effective date of North Carolina legislation approving the North Carolina-South Carolina boundary certification and must maintain residence and domicile on that same property within South Carolina.

SECTION 7.(b) Notwithstanding any other provision of law, independent persons and their dependents previously domiciled on property in South Carolina which is located in North Carolina as a result of the North Carolina-South Carolina boundary certification may, for a period of two years from the effective date of the boundary certification, be eligible for in-State rates without the requirement of residency and domicile for 12 months in this State provided such independent persons have evidenced the intent to establish domicile in North Carolina in accordance with G.S. 116-143.1. To be eligible under this provision, such persons must reside on the same property that was in South Carolina immediately prior to the effective date of North Carolina legislation approving the certified North Carolina-South Carolina boundary. To maintain eligibility for in-State tuition rates longer than the two years permitted under this paragraph, the independent persons and their dependents must satisfy the requirements of G.S. 116-143.1.

SECTION 7.(c) The provisions established under subsections (a) and (b) of this section are not transferable to persons other than those independent persons and their dependents falling within the scope of those provisions.

SECTION 7.(d) Should the domicile and residence of independent persons and their dependents change from the property affected by the boundary certification, maintenance of eligibility for in-State rates will be determined as provided in G.S. 116-143.1.

PART VIII. ABC PERMITS

SECTION 8. G.S. 18B-1006 is amended by adding a new subsection to read:

"(n1) State Border Certification. – The Commission may issue permits listed in G.S. 18B-1001(2) and (4), without approval at an election, to qualified establishments defined in G.S. 18B-1000(7) that meet all of the following requirements:

- (1) The establishment is located in a county that borders on another state.
- (2) The location of the establishment was reclassified from out-of-state to North Carolina as a result of a State border certification.
- (3) The establishment was licensed or permitted by the previous state of record to sell malt beverages and unfortified wine."

PART IX. TITLE, REGISTRATION, AND HIGHWAY USE TAX

SECTION 9.(a) Definition. – For purposes of this section, "impacted person" shall mean any person who is the owner of a motor vehicle titled and registered in South Carolina and who has now been determined to be a resident of North Carolina as a result of a boundary certification agreed to by the states of North Carolina and South Carolina.

SECTION 9.(b) The Division of Motor Vehicles of the Department of Transportation shall require title, registration, and the payment of highway use tax from impacted persons in the same manner as it currently uses for persons moving to North Carolina from another state.

PART X. ENVIRONMENTAL COMPLIANCE SCHEDULE

SECTION 10.(a) Definition. – For purposes of this section, "impacted location" shall mean any facility or property that has now been determined to be located in North Carolina as a result of a boundary certification recognized by the states of North Carolina and South Carolina, and, as a result, either of the following applies to the facility or property:

- (1) It is required to obtain a permit, license, or approval from the North Carolina Department of Environment and Natural Resources.
- (2) It is subject to a permit, license, or approval program that is operated by a local government and is delegated from or approved by the North Carolina Department of Environment and Natural Resources.

SECTION 10.(b) Notwithstanding any other provision of law to the contrary, the Department of Environment and Natural Resources, the Environmental Management Commission, or any local program delegated or approved by the Department or the Commission (collectively, the "permitting authorities"), in issuing any environmental permit, license, or approval to an impacted location, shall provide a schedule of compliance that allows the recipient of the permit, license, or approval a period of no less than five years to come into compliance with any North Carolina environmental rule or standard established by the permitting authorities that (i) has no corresponding rule or standard under South Carolina law or regulation or (ii) is more stringent than the corresponding rule or standard established under South Carolina law or regulations. The permitting authorities may include increments of progress applicable in each year of the schedule established under this subsection. The owner or operator of an impacted location may waive the schedule of compliance required by this subsection.

PART XI. UTILITIES/EXTENSION OF RURAL FIRE PROTECTION DISTRICTS, COUNTY SERVICE DISTRICTS, AND WATER AND SEWER DISTRICTS

SECTION 11.(a) The owner or occupant of a dwelling unit or commercial establishment on improved property that shall be deemed located in whole or in part in the State of North Carolina as a result of the boundary certification described in this act may continue to receive utility services from the South Carolina utility or its successor that is providing service to the dwelling unit or commercial establishment on January 1, 2016. However, the owner or occupant may, within his or her discretion, elect to have one or more of the utility services being provided to the property by a South Carolina utility on January 1, 2016, be provided by a North Carolina utility as long as the property is located within the North Carolina utility's service area. A North Carolina utility that is a city or county may require the owner of the property to pay a periodic availability fee authorized by law only if the owner elects to have utility service provided to the dwelling unit or commercial establishment by the North Carolina utility. A South Carolina utility that provides service to the property as authorized in this section is not a public utility under G.S. 62-3(23) and is not subject to regulation by the North Carolina Utilities Commission as it relates to providing the particular utility service involved. For purposes of this subsection only, the term "South Carolina utility" has the same meaning as the term "utility" or "utilities" in the Code of Laws of South Carolina, and the term "North Carolina utility" has the same meaning as the term "public utility" which is defined in G.S. 62-3(23) and also includes a city or county that provides any of the services listed in G.S. 160A-311 or G.S. 153A-274, an authority organized under the North Carolina Water and Sewer Authorities Act, or an electric or telephone membership corporation.

SECTION 11.(b) The governing body of a county that gains territory as a result of the boundary certification described in this act shall meet as soon as practicable after the date this act becomes law to determine whether the residents of the territory (i) require the services provided by an existing rural fire protection district established under Article 3A of Chapter 69 of the General Statutes or a county service district established under Article 16 of Chapter

1 153A of the General Statutes or (ii) would benefit from the services provided by an existing
2 county water and sewer district established under Article 6 of Chapter 162A of the General
3 Statutes. If the governing body finds that the residents of the territory require or would benefit
4 from the services of the district, the governing body shall annex the territory to the district as
5 provided in G.S. 69-25.11(1), 153A-303, and 162A-87.1.

6
7 **PART XII. SEVERABILITY AND EFFECTIVE DATE**

8 **SECTION 12.** If any provision of this act or its application is held invalid, the
9 invalidity does not affect other provisions or applications of this act that can be given effect
10 without the invalid provisions or application, and to this end the provisions of this act are
11 severable.

12 **SECTION 13.** Except as otherwise provided, this act is effective when it becomes
13 law.